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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)	No. CR 17-435 DMG
)	
Plaintiff,)	DEFENDANT'S REPLY BRIEF TO
)	GOVERNMENT'S OPPOSITION TO
vs.)	THE DEFENDANT'S SENTENCING
)	POSITION
SHI SHAN PIAO)	Sentencing date: October 2, 2019
)	
Defendant)	
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Defendant, Mr. Shi Shan Piao, submits his reply to the Governments opposition to the sentencing position for this defendant which was submitted on September 17, 2019. It remains

1 to be the defense view that the prosecutions sentencing position
2 seeks what would be a severe over-sentence.
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4 Dated: September 27, 2019
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6 LAW OFFICE OF PHILIP DEITCH
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8 *Philip Deitch*
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10 ATTORNEY FOR DEFENDANT
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MEMORANDUM

Before the court is a near 50 year old illegal immigrant who, by his own admission, participated with another person, for a limited period of time, in a major bank fraud. Mr. Piao is prepared to accept the full responsibility for his own role in the fraud, but, given the extreme consequences that he faces, he is hopeful that this court would tailor it's sentence to Mr. Paio's own and personal wrongdoing rather than include the independent misconduct of his named codefendant which was conducted by his co-defendant independent of Mr. Paio's knowledge or participation.

It is not irrelevant to the sentencing overview that it is the state of mind of the defense that upon the conclusion of Mr. Paio's United States Federal Court sentence he will be deported, most likely to China, which is not a human rights country. In China, the defense projects that Mr. Piao faces severe but presently unknown very serious consequences for his criminal activities that included citizens of China.

1 The ability of the defense to respond factually to the projected
2 sentences included in the PSR and amplified in the governments
3 opposition is very limited. Much of that which Mr. Paio is accused of
4 would be included in his computer, which law enforcement
5 reviewed and seized, but is unavailable to the defense. To the extent
6 that the guideline calculations are projected from the extent of the
7 loss, Mr. Paio is unable except generally to corroborate his
8 contentions that the loss calculation that may be attributed to him
9 based on the prosecution theme of joint responsibility is severely
10 overstated.
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12 Mr. Paio urges that, except for a period of approximately a year
13 in 2015, he expressly parted from Mr. Runze and that the balance of
14 the loss figure is exclusively the result of the conduct of Mr. Runze,
15 the government cooperator's independent conduct. In Mr. Piao's
16 review of the overall loss calculation list of victims provided to the
17 defense by the prosecution, Mr. Piao does not even know of some
18 of the victim banks that are described in that document.
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1 Although the earlier contention offered by the defense
2 regarding Mr. Paio's limited abilities to participate in the overall
3 fraud,, based upon the fact that he neither speaks or writes English
4 or is competent on a computer was discounted in the prosecutions
5 memo, those facts are a significant limitations on Mr. Paio's ability
6 to contribute to the fraud to which he has admitted. Me. Runze
7 came to the United States at the age of 10 and was educated in
8 United States schools. That discrepancy in roles between the two co-
9 defendants would appear to corroborate Mr. Paio's contention that
10 he was not the major engineer of the fraud. That is further
11 corroborated by the fact that, during the period that Mr. Paio was a
12 participant in the fraud, as set forth in the original defense
13 sentencing memo he only received a small percentage (10%) of the
14 proceeds of the criminal venture. While that fact is not a defense, as
15 urged by the prosecution, it is somewhat mitigating.

16 The defense responds to the specific categories of violation
17 specified in the prosecution opposition. The defense responses to
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1 the defense opposition to the prosecution contentions are set forth
2 below under the category that appears in the prosecution memo.
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4 **A. DEFENSE RESPONSE TO CONTENTION THAT THE**
5 **DEFENSE OBJECTIONS SHOULD BE DISREGARDED**
6 **AS UNTIMELY.**
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8 It is the defense request that the court consider the positions
9 offered by the defense in its original defense sentencing
10 memorandum, which was not objected to when originally filed.
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12 The defense would also request that the court give consideration
13 to the issues as reaffirmed in this memorandum. Frankly, since
14 over a year has passed since the defense objections and sentencing
15 memo were submitted, counsel does not recall the reasons for the
16 extensive delay. Counsel has been a criminal lawyer for over 60
17 years and would not overlook a filing deadline without a good
18 reason. The fact that no objection was presented at the time
19 suggests that counsel had communicated a reason to the
20 prosecution at the time. In hindsight, counsel is of the opinion that
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1 the delay may have been occasioned by the fact that counsel was
2 still impacted by still experiencing a serious vision issue called
3 “Giant Cell Arteritis.” Counsel had been treated for that ailment
4 earlier at Kaiser Permanente. That condition creates serious
5 limitations on ones ability to use a computer. Also, at the time,
6 Counsel’s wife, Carla, who is counsel’s paralegal and prepares
7 most of the office documents from drafts prepared by counsel, was
8 experiencing a severe diabetic neuropathy. Thus counsel, who
9 himself was limited, was left with the responsibility of
10 investigating, preparing and finalizing all of the office documents
11 with very limited assistance. The combination of the two illnesses
12 had a serious but temporary impact on counsel’ practice.
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20 Nonetheless, no objection was raised to the delayed by the
21 prosecution to the delayed filing at the time. Accordingly, that
22 objection was likely waived. It was filed on June 17, 2019. The
23 objection was not offered until September 19, 2019.
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**B. DEFENSE RESPONSE TO CONTENTION THAT DEFENDANT
OBJECTIONS TO THE ROLE ADJUSTMENT AND THE
2B1.1(B)(10) ARE INEFFECTIVE**

The objection is based upon the contention that (1) the defense denial of the role enhancements were insufficient, and (2) a “substantial part of the conspiracy was committed from outside the United States.

The basis for the role enhancement denial rests on what has been elaborated in this memorandum. The primary leader of this fraud was Mr. Runze who engineered and carried out the bulk of the fraud. That is not to say that Mr. Piao did not engage in significant fraudulent conduct. He clearly did. But contrary to the assertion in the PSR he is not the “organizer and lynchpin” of the criminal enterprise. The defense placing that contention before the court is entirely appropriate.

The denial regarding the two level increase for out of the country activities stems from the fact that the enhancement requires that out of the country conduct to be a “substantial part” of the fraud. It is the view of the defense that fact that the

1 documents were acquired in China was not a substantial part of
2 the activities.
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4 **C. DEFENSE RESPONSE TO THE CONTENTION THAT THE**
5 **DEFENDANT WORK HISTORY IS FALSE**

6 Mr. Piao in fact had worked as a taxi driver. One of his roles
7 with regard to Mr. Runze was to drive him around in his taxi to the
8 locations designated by Mr. Runze. The fact that he was not able
9 to work as a result of an auto accident is corroborated by looking
10 at Mr. Piao's leg, which contains a huge scar resulting from that
11 incident.
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15 **D. DEFENSE RESPONSE TO DEFENSE CONTENTION THAT**
16 **DEFENDANTS CLAIMED METHAMPHATIME ADDICTION IS**
17 **A PLOY**

18 Mr. Piao lived with a woman who was severely addicted to
19 methamphetamine. In time, he joined her in the use of that drug
20 and became addicted along with her. That fact may be an
21 explanation for the fact that a man with no previous history of
22 criminal activity at middle age began to engage in a significant
23 fraud. The expenses of a major drug addiction are often
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1 extraordinary. For that addiction to overcome a family can lead to
2 tragic results, as it did in this case.
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4 For the prosecution to suggest that his addiction is a ploy
5 learned from other inmates at MDC is unfounded speculation.
6 While he has minimal contact with other Asians at MDC, his
7 inability to communicate with others because he does not speak
8 English would seem to denounce that speculation. To the extent
9 that his methamphetamine addiction would provide Mr. Piao with
10 sentencing or incarceration options should be appropriately
11 considered.
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16 **E. DEFENSE RESPONSE TO THE PROSECUTION BLAME** 17 **SHIFTING CONTENTION** 18

19 For the most part, the prosecutions objections have already
20 been addressed in this memorandum by the defense position,
21 supra, regarding role. The defense will not repeat those
22 contentions.
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25 The prosecution memo makes reference to Mr. Paio pointing
26 out Mr. Piao focus on his computer as a factor to consider
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1 regarding the extent of his involvement in the fraud. The nature of
2 the fraud assertions in this case would lead to the inference that
3 the substantial use of a computer is vital to the commission of the
4 underlying crime. Mr. Paio invites an examination of the content of
5 his computer as an indication that his participation in the fraud is
6 limited and not as extensive as expressed by the prosecution.
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10 **F. DEFENSE RESPONSE TO CONTENTION THAT MR. PIAO HAS**
11 **SUBMITTED CONTRADICTORY CLAIMS.**
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13 Without access to his computer, Mr. Piao can only estimate the
14 proceeds that he obtained from his participation in the fraud.
15 While he can only estimate that amount from his memory, he
16 certainly is able to reject the contention that he personally
17 received \$1,697, 186.49 from the fraud (para. 21 PSR). Nothing in
18 his lifestyle suggests that he received sums even approaching that
19 amount. In fact, as pointed out in the earlier defense memo, he
20 needed to borrow money from the government informant to
21 survive. That fact corroborates the defense contention that he did
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1 not receive the sums attributed to him by the prosecution, and that
2 also amplifies his contention regarding the impact of his meth use.
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4 **G. DEFENSE RESPONSE TO THE PROSECUTION OBJECTION TO**
5 **THE DEFENDANTS VIEW THAT CITIZENSHIP AND LACK OF**
6 **ENGLISH ARE MITIGATING FACTORS**

7 The impact of a court' sentence on a defendant is not an
8 irrelevant consideration. It has been and still is true that a prison
9 sentence for a foreign person is more difficult than for an English
10 speaking individual. It is not an irrelevant consideration for a
11 sentencing Judge. It is further a consideration that he will
12 potentially need to be subjected to the whims of a country that
13 does not consider human rights. A prosecutor's view that raising
14 those factors is somehow improper is a reflection of prosecutorial
15 insensitivity to the human condition.
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21 **H. MR. PIAO HAS DEMONSTRATED ACCEPTANCE OF**
22 **RESPONSIBILITY**
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24 The contention that Mr. Piao has not demonstrated acceptance
25 of responsibility distorts the reality of Mr. Piao's conduct. It should
26 be noted that at least on three occasions, and likely more, he has
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1 met with law enforcement and prosecutors to discuss his
2 involvement in the case. Mr. Piao does not deny his involvement in
3 the fraud that he committed and early in the case he plead guilty to
4 the charges and confessed his actions in open court. He signed a
5 plea agreement that detailed his crimes. Mr. Piao has set forth in
6 detail earlier, and in this memo, his legitimate personal
7 contentions that justify a lesser sentence. That is his right under
8 the law and under the Criminal Justice System. Doing so appears to
9 be a novel option to the prosecutor, who mischaracterizes those
10 efforts as a fraud on the court.
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17 Therefore, the defense opposes the prosecutions contention
18 that Mr. Piao has attempted to obstruct justice and has therefore
19 lost acceptance of responsibility. The defense further emphatically
20 denies the contention that he has attempted a fraud on the court.
21 That assertion is an absurd distortion of the reality of the
22 defendants position.
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26 Dated: September 27, 2019 LAW OFFICE OF PHILIP DEITCH

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28 Philip Deitch
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